



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

FILED

09-17-07
04:59 PM

Order Instituting Investigation to Consider Policies to Achieve the Commission's Conservation Objectives for Class A Water Utilities.	Investigation 07-01-022 (Filed January 11, 2007)
In the Matter of the Application of Golden State Water Company (U 133 E) for Authority to Implement Changes in Ratesetting Mechanisms and Reallocation of Rates.	Application 06-09-006 (Filed September 6, 2006)
Application of California Water Service Company (U 60 W), a California Corporation, requesting an order from the California Public Utilities Commission Authorizing Applicant to Establish a Water Revenue Balancing Account, a Conservation Memorandum Account, and Implement Increasing Block Rates.	Application 06-10-026 (Filed October 23, 2006)
Application of Park Water Company (U 314 W) for Authority to Implement a Water Revenue Adjustment Mechanism, Increasing Block Rate Design and a Conservation Memorandum Account.	Application 06-11-009 (Filed November 20, 2006)
Application of Suburban Water Systems (U 339 W) for Authorization to Implement a Low Income Assistance Program, an Increasing Block Rate Design, and a Water Revenue Adjustment Mechanism.	Application 06-11-010 (Filed November 22, 2006)
Application of San Jose Water Company (U 168 W) for an Order Approving its Proposal to Implement the Objectives of the Water Action Plan.	Application 07-03-019 (Filed March 19, 2007)

REPLY BRIEF OF CALIFORNIA WATER ASSOCIATION – PHASE 1A

In accordance with the briefing schedule established by Administrative Law Judge Grau, California Water Association (“CWA”) submits its reply brief in response to the opening briefs filed in this Phase 1A of this proceeding.

I. INTRODUCTION

CWA urges the approval of each of the settlement agreements into which California Water Service Company, Suburban Water Systems, and Park Water Company have entered with various parties to this proceeding regarding the various subjects addressed in those settlement agreements. Each of these settlements complies with the requirements of Rule 12.1 that settlements be “reasonable in light of the whole record, consistent with the law, and in the public interest.”

With the exception of Suburban’s request to recover the expenses it has incurred in participating in this proceeding, the Division of Ratepayer Advocates (“DRA”) has settled with each of the water companies on all issues covered in this rate-related phase of the proceeding. The remaining parties oppose one or more of the elements in the DRA/water utility settlements. For the reasons discussed below, CWA urges the Commission to reject the arguments of the other parties on the issues they contest and approve the settlements DRA has reached with each of the water utilities, and also to approve Suburban’s request for recovery of the costs associated with participating in this proceeding.

II. DISCUSSION

A. The Joint Consumers’ Recommendations Regarding LIRA, Customer Outreach and Data Collection Are Not Supported By The Record And Sacrifice Attention to Individual Characteristics of Water Utilities For “One-Size-Fits-All-Regulation.”

In their opening brief, the Joint Consumers – The Utility Reform Network (“TURN”), National Consumer Law Center (“NCLC”), Latino Issues Forum (“LIF”), and Disability Rights Advocates (“DisabRA”) – recommend a percentage LIRA discount and uniform requirements applicable to all three water utilities regarding consumer education

and data collection. These recommendations are not supported by the record and would impose a “one-size-fits-all” regulatory scheme that ignores the individual characteristics of the different companies.

Cal Water and Park, as well as other utilities not among the settling parties, already have well-established low income ratepayer assistance (“LIRA”) programs, including provisions for flat-rate discounts. Suburban and DRA propose a LIRA program in their settlement agreement calling for a flat rate discount. The Joint Consumers oppose a flat rate discount and recommend that the Suburban LIRA – and implicitly Cal Water’s, Park’s, and other utilities’ LIRAs – be revised to provide for a percentage discount of 15% off of qualifying customers’ bills.

The Joint Consumers’ recommendation should be rejected. There is no compelling evidence in the record that a percentage discount is more effective than a flat rate discount in addressing conservation or affordability issues. The Joint Consumers’ brief acknowledges that in some cases the Commission has approved low income programs with a percentage discount, but in other cases – including Cal Water and Park – it has approved low income programs with a flat rate discount. Joint Consumers’ Brief, at 11-12. These different approaches illustrate the Commission’s appropriate case-by-case consideration of each utility’s low income program and that no single approach is necessarily superior to others. DRA and Suburban clearly believe that a flat rate discount is appropriate for Suburban’s customers and the Commission should approve that proposal. It is also cause for concern that a percentage discount will necessarily provide a greater benefit to users of greater volumes of water – obviously a disincentive for conservation. Moreover, the circumstances regarding the approval of the existing flat

rate discounts LIRA programs of Cal Water and Park are not a part of the record in this proceeding and it would be inappropriate to re-litigate those programs here.

With respect to the subjects of consumer outreach and data collection related to conservation rate design and other conservation measures, the Joint Consumers recommend that their settlement with Suburban on consumer outreach should be imposed on Cal Water and Park, and that their settlement with Suburban and Park on data collection should be imposed on Cal Water. Joint Consumers' Brief, at 15-16, and 19. The Commission should reject this recommendation as well.

One-size-fits-all regulation is rarely appropriate and it clearly is not appropriate in connection with consumer outreach and data collection related to the conservation measures that will be adopted in this proceeding. Each utility's customer base, as well as the customer bases of each district of a single utility, is different. These differences require individually tailored methods of outreach and data collection. Allowing the settlements with one or two utilities to be imposed upon all other utilities would be both unfair and ineffective in dealing with different customer bases. Significant costs will be expended in the utilities' outreach efforts and in their collection of data related to various conservation measures. Additionally, it is far from certain how effective any given outreach program will be, or what data will be most helpful in gauging the impacts of the various conservation measures. Thus, it would not be appropriate for the Commission to impose a single set of requirements on all utilities for consumer outreach and data collection.

In addition, it should be noted that the topics of consumer outreach and data collection previously were designated as "non-rate" issues to be addressed during

Phase 2 of this proceeding. In some cases, the settling utilities have been willing to address those issues in a settlement context, but that should not lead the Commission to prejudge the manner in which these issues should be generally resolved before other interested parties have a chance to address them in Phase 2. Instead, the Commission should approve the individual settlements between DRA and each of the three utilities on the subjects of consumer outreach and data collection while otherwise leaving the issues open for further consideration in Phase 2.

B. The Consumer Federation of California's Recommendations Should Be Rejected.

With the exception of its settlement with Park Water on the subjects of data collection, monitoring and reporting, the Consumer Federation of California (“CFC”) has not settled with any of the three water utilities on any issues being considered in this very important proceeding. CFC essentially opposes all of the other settlements reached among the utilities, DRA and other parties. CFC further recommends that the implementation of any conservation rates be postponed until the development of various cost information studies have been completed and conservation rates for all customer classes have been developed. CFC Brief, at 2. These CFC recommendations should be rejected by the Commission.

In its opening brief, Cal Water provided ample evidence of the almost complete lack of familiarity and understanding shown by CFC's advocate regarding water utilities in general, and water utility rate design in particular. Cal Water Brief, at 11-16. The Commission should give little, if any consideration to the recommendations of a party with almost no experience in water utility matters and which stands alone, among *all* the parties to this proceeding, in opposing every significant water conservation

measure agreed to and recommended by the other parties. The adoption of water conservation measures is too important an initiative to be needlessly deferred until detailed and voluminous data is collected and complicated studies are completed. Nor has CFC demonstrated the relevance or importance of the studies it urges to be conducted or justified the substantial expense that would have to be incurred to conduct such studies. Increasing block rates, revenue adjustment mechanisms and other conservation measures recommended in the settlements in this proceeding are appropriate methods of encouraging and achieving conservation. Their implementation should not, as CFC recommends, be postponed any longer.

C. The Commission Should Permit Suburban Water To Recover The Costs Associated With Its Participation In This Proceeding.

DRA has settled every issue in this phase of the proceeding with Cal Water, Suburban and Park except for the issue of Suburban's request to recover the expenses that it has incurred or will incur in this proceeding. DRA opposes Suburban's request arguing that to permit Suburban to recover its expenses would constitute improper retroactive ratemaking. CWA disagrees and urges the Commission to allow Suburban to recover the expenses it has or will incur in this proceeding.

More than a year ago, in D.06-08-017, Suburban was *ordered* to file an application for a conservation rate design, a water revenue adjustment mechanism, and a low income program in order to address the important public policy goal of water conservation. In doing so and in participating in this proceeding, Suburban has incurred, and will continue to incur, significant costs. In its opening brief, Suburban aptly points out that the recovery of expenses it has incurred in this proceeding is no different than the recovery of costs incurred in preparing and litigating a general rate case: The costs of

preparing and litigating a general rate case form the basis of a regulatory expense category that water utilities are authorized to amortize and recover over a three year period. Suburban Brief, at 7. In general rate cases, there is no prior authorization to track such expenses for later recovery. That lack of prior authorization to track and recover such expenses never has been considered improper retroactive ratemaking, and neither should Suburban's recovery of the expenses it has incurred and will continue to incur in an application proceeding that it was ordered by the Commission to file.

Suburban also cites D.90-10-36, in a California American Water Company application in which it held that it would be unjust not to allow a utility to recover the expenses it incurred in complying with a Commission directive. Suburban Brief, at 12. This is exactly the case with respect to the Commission's order that Suburban file its application for the implementation of various water conservation measures. Suburban should not be penalized for complying with a Commission order or for addressing important public policy goals such as water conservation. Thus, CWA urges the Commission to allow Suburban to recovery the expenses it has incurred in participating in this proceeding.

III. CONCLUSION

For all the reasons discussed herein, California Water Association urges the Commission to approve each of the settlement agreements into which California Water Service Company, Suburban Water Systems, and Park Water Company have entered with various parties to this proceeding, to approve Suburban's recovery of its expenses of participation in this case, and to reject the other proposals pending in Phase 1A of this proceeding.

DATED: September 17, 2007

Respectfully submitted,

NOSSAMAN, GUTHNER, KNOX & ELLIOTT LLP
Martin A. Mattes
Jose E. Guzman, Jr.

John K. Hawks
Executive Director
CALIFORNIA WATER ASSOCIATION
601 Van Ness Avenue, Suite 2047
Mail Code #E3-608
San Francisco, CA 94102-3200
Tel: (415) 561-9650
Fax: (415) 561-9652
email: jhawks_cwa@comcast.net

By /S/ JOSE E. GUZMAN, JR.
Jose E. Guzman, Jr.
50 California Street, 34th Floor
San Francisco, CA 94111
Tel: (415) 398-3600
Fax: (415) 398-2438
e-mail: jguzman@nossaman.com
Attorneys for CALIFORNIA WATER ASSOCIATION

CERTIFICATE OF SERVICE

I, Maura Bonal, hereby certify that I will on this date serve a copy of the foregoing REPLY BRIEF OF CALIFORNIA WATER ASSOCIATION – PHASE 1A on the parties in I.07-01-022 *et al.* below:

By Electronic Mail: [Updated August 27, 2007]

charak@nclc.org; jlkiddoo@swidlaw.com; owein@nclcdc.org; ataketa@fulbright.com; tkim@rwglaw.com; debershoff@fulbright.com; fyanney@fulbright.com; ed@parkwater.com; leigh@parkwater.com; rdiprimio@valencia.com; bobkelly@bobkelly.com; dadellosa@sgvwater.com; tjryan@sgvwater.com; rkmoore@gswater.com; kswitzer@gswater.com; nancitrان@gswater.com; Kendall.MacVey@BBKlaw.com; cmailloux@turn.org; jhawks_cwa@comcast.net; marcel@turn.org; nsuetake@turn.org; mpo@cpuc.ca.gov; mlm@cpuc.ca.gov; ndw@cpuc.ca.gov; enriqueg@lif.org; jguzman@nossaman.com; lweiss@steefel.com; Ldolqueist@steefel.com; dmmarquez@steefel.com; mmattes@nossaman.com; lex@consumercal.org; pucservice@dralegal.org; pucservice@dralegal.org; dstephen@amwater.com; pschmiede@schmiegelaw.com; sferraro@calwater.com; lmcghee@calwater.com; broeder@greatoakswater.com; palle_jensen@sjwater.com; bill@jbsenergy.com; jeff@jbsenergy.com; demorse@omsoft.com; darlene.clark@amwater.com; danielle.burt@bingham.com; john.greive@lightyear.net; mcegelski@firstcomm.com; charles.forst@360.net; doug@parkwater.com; luhintz2@verizon.net; rmd@cpuc.ca.gov; debbie@ejcw.org; tguster@greatoakswater.com; chris@cuwcc.org; katie@cuwcc.org; mvander@pcl.org; bdp@cpuc.ca.gov; dsb@cpuc.ca.gov; trh@cpuc.ca.gov; flc@cpuc.ca.gov; jcp@cpuc.ca.gov; jlg@cpuc.ca.gov; jws@cpuc.ca.gov; kab@cpuc.ca.gov; llk@cpuc.ca.gov; phh@cpuc.ca.gov; smw@cpuc.ca.gov; tfo@cpuc.ca.gov; mlwhitehead@sgvwater.com

By hand delivery:

Hon. Janice L. Grau
Administrative Law Judge
California Public Utilities Commission
505 Van Ness Avenue, Room 5011
San Francisco, CA 94102

Executed this 17th day of September, 2007 in San Francisco, California.

/S/ MAURA BONAL

Maura Bonal